



## Production & Supply Terms and Conditions

(v4.3/2023)

**PARTIES:** Blender Design Limited ("Blender")  
Customer ("you" or "Customer")

### 1. ENGAGEMENT

- 1.1 The parties agree that Blender will provide Parts to the Customer, on the terms and conditions set out in these Terms and Conditions and any Production & Supply Estimate signed or otherwise accepted by the parties.
- 1.2 Unless expressly stated otherwise, if there is any conflict between the Agreement documents, the following precedence will apply:
  - I. The Production & Supply Estimate.
  - II. These Production & Supply Terms and Conditions.
- 1.3 Each Production & Supply Estimate in conjunction with These Terms and Conditions, constitute a separate Agreement.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement, unless the context otherwise requires:
  - (a) "**Agreement**" means these Production & Supply Terms and Conditions together with a Production & Supply Estimate;
  - (b) "**Blender Suppliers, Blender's Suppliers**" means the manufacturers and suppliers arranged by Blender to provide the Parts, and includes Converters;
  - (c) "**Confidential Information**" means any confidential information, data and know-how (whether technical or not), or other information of a sensitive nature, relating to the parties, their business activities and respective customers, their Intellectual Property, and Blender's Suppliers, but excluding information which is in the public domain through no breach of this Agreement;
  - (d) "**Converter**" means an entity that Blender has arranged to convert raw materials or components into Parts
  - (e) "**Customer Tooling**" means the tools, moulds and dies owned by the Customer and used by a Converter to manufacture Parts;
  - (f) "**Expenses**" means any order costs, disbursements, fees, or expenses reasonably incurred by Blender to provide the Parts;

- (g) "**Price, Prices**" means the cost payable to Blender for the Parts as specified in a Production & Supply Estimate;
- (h) "**Force Majeure Event**" means an event or occurrence which is beyond Blender's or the Customer's (as the case may be) reasonable control, including (without limitation) acts of God, fire, flood, earthquake, acts of terrorism, pandemics, epidemics, quarantine restrictions, riots, war or conflicts, military operations, government restraint or lockdown, state of emergency, expropriation, prohibition, substantial intervention or change of legislation, regulation or policy, denial of the use of a port or airport, port or airport congestion or delays, or delays or non-performance by Blender's Suppliers;
- (i) "**Intellectual Property**" means all rights conferred under statute, common law and equity in and in relation to copyright, inventions (including patents), registered and unregistered trade-marks, registered and unregistered designs, circuit layouts, trade names, logos, concepts, methods, know-how, trade secrets, and all other intellectual property rights of any nature anywhere in the world, statutory or otherwise, whether registered or not;
- (j) "**Losses**" means all claims, liabilities, losses, damages, expenses and legal costs (including on a solicitor and own customer basis) suffered or reasonably incurred by a party;
- (k) "**Parts**" means items to be supplied pursuant to this Agreement;
- (l) "**Production & Supply Estimate**" means an estimate or quotation for the supply of Parts that becomes signed or otherwise accepted by Blender and the Customer;
- (m) "**Working Day**" means any day of the week, other than:
  - (i) Saturdays and Sundays;
  - (ii) A public holiday in New Zealand; and
  - (iii) A day in the period 23rd December to 7th January.

### **3. BLENDER'S OBLIGATIONS**

3.1 Blender must:

- (a) Supply the Parts in accordance with this Agreement and any agreed quality plan/s.
- (b) On request, keep you informed of the status of Parts ordered and promptly notify you of any event that directly affects the delivery schedule of the Parts.
- (c) Maintain accurate records of Expenses incurred in procuring Parts and arranging Delivery.

### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer must:

- (a) Pay Blender for supplying the Parts in accordance with any Production & Supply Estimate and clause 6.
- (b) Promptly make decisions (including approvals), and provide Blender with all instructions and information necessary for the proper supply of Parts in the format reasonably specified by Blender (if any).
- (c) Be fully and solely responsible for:
  - (i) Selection of the Part to be manufactured/supplied and the Part specifications, regardless of any involvement by Blender (including prior design services); and
  - (ii) The accuracy and completeness of all information, instructions and specifications provided. You acknowledge that Blender will rely on such instructions and other information, and that Blender accepts no Losses that the you or any other person sustains, directly or indirectly, arising from or relating to Blender's reliance on the instructions and other information supplied by you.

### **5. INTELLECTUAL PROPERTY**

5.1 Unless otherwise specified in the Agreement, Intellectual Property shall be owned and used as follows:

- (a) The parties shall retain ownership of their respective pre-existing Intellectual Property (if any); and
- (b) If the Parts include any Intellectual Property owned by you, you grant Blender the right, authority and licence to use your Intellectual Property for the sole and exclusive purpose of supplying the Parts pursuant to this Agreement.

### **6. CHARGES AND PAYMENT TERMS**

- 6.1 You agree to pay Blender all amounts when due in full and without any deductions, set off, counterclaim or offset of any kind.
- 6.2 You acknowledge that Prices and Expenses are subject to reasonable change, due to variations outside of Blender's control.
- 6.3 Prices are based on order quantities. If you wish to change the quantity of Parts ordered, different pricing may apply.
- 6.4 Prices may be based on foreign exchange rates at the time that a Production & Supply Estimate is prepared. Any subsequent exchange rate variances greater than 2%, may be invoiced to you with accompanying evidence.
- 6.5 Unless stated otherwise in the Production & Supply Estimate:
  - (a) 100% of the Tooling Price and any non recurring expenses; and 50% of the total Parts Price must be paid by the Customer when the Production & Supply Estimate is signed or otherwise accepted by the parties.
  - (b) The remaining balance, including any additional Expenses incurred must be paid by you prior to receiving the Parts.
  - (c) To allow flexibility in the freight method and delivery schedule, and allow for variations in freight demands and pricing, freight Expenses are not included in the Production & Supply Estimate and will be charged to you.
- 6.6 Unless stated otherwise, all amounts are exclusive of GST and any other taxes, tariffs, duties or similar charges.
- 6.7 If you reasonably dispute an invoice or part of an invoice, you must, within 10 Working Days of receiving the invoice, give reasons for withholding payment of the disputed amount and pay the undisputed amount. If notice is not given by you within the time frame stipulated, then you shall be deemed to have accepted the invoice.
- 6.8 Subject to clause 6.7, where any invoice or payment due to Blender is not paid in full and on time:
  - (a) You must pay monthly late fees at 5% per month on any amounts outstanding, inclusive of compounding penalties; and
  - (b) Blender may suspend some or all of the Part orders until payment has been received.
  - (c) You shall pay all costs and expenses (including legal costs on a solicitor and own Customer basis) incurred by Blender in recovering any money owing by you.

## **7. LEAD TIMES AND DELIVERY**

- 7.1 All delivery times communicated are indicative. The expected delivery schedule can only be confirmed upon acceptance of a Production & Supply Estimate and placing the corresponding Parts order/s.
- 7.2 Unless otherwise agreed, delivery shall be complete when the parts are delivered to you, given to a third party carrier, or Blender notifies you that the Parts are (subject to payment of amounts then due) ready for collection.
- 7.3 If you fail or refuse, or indicate to Blender that you will fail or refuse, to take delivery of any Parts, those Parts shall be deemed to have been delivered when Blender was willing and in a position to Deliver them. Blender shall be entitled to sell or dispose of Parts which are not paid for and collected within 20 Working Days after notice in writing of the intention to sell or dispose of the Parts has been given to you. Subject to clause 7.4, all charges and expenses arising in connection with the storage and sale or disposal of the Parts shall be paid by you.
- 7.4 Blender may (at its discretion, and at the Customer's risk) store Parts upon Delivery for up to 3 months for no charge. If Parts are held beyond a 3 month period, or if the Parts occupy a significant space, are valuable or are dangerous, Blender may charge you for storage costs which must be paid before the Parts are collected.
- 7.5 In the event that Blender cannot deliver the full Parts order, then Blender shall be entitled to make partial delivery of the Parts provided that it promptly notifies you that partial delivery is being made.
- 7.6 Delivery relies on factors outside the control of Blender (including freight suppliers, customs agencies and Blender's Suppliers). Blender shall use its reasonable commercial endeavours to provide the Parts according to any agreed timetables, provided however that any dates are intended for planning and estimating purposes only and are not contractually binding. Estimates of time for delivery of the Parts are given on the assumption that Blender receives full cooperation and commitment from the Customer, its employees and its agents (including the provision of any information required), and all relevant Blender Suppliers. Blender shall not be liable for any Losses arising from any delay in delivery of the Parts.
- 7.7 Unless otherwise agreed, Blender will supply Parts in standard packaging or reused packaging in line with sustainable practices.

## **8. OWNERSHIP AND SECURITY**

- 8.1 Blender will retain ownership of the Parts until all amounts owed by you to Blender have been received in full by Blender.
- 8.2 You grant Blender a security interest in the Parts and their proceeds and accessions to secure payment of all amounts due by, and obligations owed by, the Customer to Blender. Nothing in sections 114(1) (a), 133 and 134 of the Personal Property Securities Act 1999 shall apply to this Agreement. The Customer waives its rights pursuant to sections 121, 125, 129, 131 and 132 of that Act and its rights to receive any verification statement relating to the security interests in the Parts.
- 8.3 The risk of loss of, or damage to, the Parts passes to the Customer when Delivered, and the Customer shall bear all costs following Delivery, even if Blender may retain title and ownership of the Parts.

## **9. BLENDER WARRANTIES**

- 9.1 The parties acknowledge that Blender will arrange for the supply of Parts to you, but Blender is not the manufacturer of the Parts. Blender warrants that it will:
  - (a) Make reasonable commercial endeavours to arrange for the supply and Delivery of 'made-to-spec' ("MTS") Parts and assemblies to match your specifications; and
  - (b) Take all reasonable steps to transfer manufacturer or third party warranties (if any) for 'off the shelf' ("OTS") Parts to you. If a warranty applies, the period is 6 months return to us.
- 9.2 For a period of 6 months following Delivery, the Customer may reject Parts that do not meet the agreed specifications. If the Customer notifies Blender that it rejects any Parts according to this clause, then Blender shall investigate the rejected Parts and, if Blender is satisfied that the Parts do not meet the agreed specifications, then Blender shall notify the relevant Supplier and take reasonable commercial steps to procure replacement Parts or provide a refund of the amounts paid for the Parts.
- 9.3 Unless expressly agreed in writing between the parties, Blender does not provide any further warranties for Parts sold, supplied or arranged by Blender, and the Customer acknowledges and agrees that it relies solely on the warranty provided by Blender's Supplier (if any), provided that Blender shall provide reasonable assistance with any Customer warranty claims arising for Parts.
- 9.4 To the maximum extent permitted by law, Blender disclaims all other warranties, conditions, undertakings and representations relating to the Parts, either express or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose.

## 10. CUSTOMER WARRANTIES

- 10.1 The Customer warrants that:
- (a) Intellectual Property and other information (including designs, concepts, prototypes or models) supplied to Blender do not breach any third party Intellectual Property rights;
  - (b) The Customer is duly authorised to supply the items and materials described in clause 10.1(a) to Blender for the purpose of supplying Parts;
  - (c) It has undertaken adequate design verification testing and validation to fully understand Part and/or assembly failure; and
  - (d) The specifications of Parts and/or assemblies meet their requirements.
  - (e) It has full responsibility for the sale or distribution of Parts to their customers and understands the risks involved in doing so.
- 10.2 You acknowledge that Blender will not independently verify or research the items and materials described in clause 10.1(a), but instead relies on your warranty.
- 10.3 The Customer indemnifies and shall keep indemnified Blender, its directors, employees and agents, from and against all Losses relating to or arising from the procurement and supply of Parts or from any breach of the Agreement by the Customer.

## 11. CONFIDENTIALITY

- 11.1 Except as permitted under the Agreement, each party must keep strictly secret all Confidential Information supplied by the other party and shall only use it for the purposes of the Agreement, unless otherwise agreed by the other party in writing or as required by law.
- 11.2 Either party may disclose the other's Confidential Information to its directors, officers, employees, advisors or agents who have a genuine need to know the information in order to fulfil the party's obligations, or enforce its rights, under the Agreement, provided however that Blender is not required to provide information regarding Blender Suppliers to the Customer, except as provided in clause 3.1(f).
- 11.3 On termination of the Agreement, each party must if directed by the other party promptly return or destroy all Confidential Information supplied by the other party.
- 11.4 Except as provided in clause 3.1(f):
- (a) All information relating to Blender's Suppliers shall be maintained by the Customer as strictly confidential, and must not be disclosed or used by the Customer; and

- (b) Unless otherwise agreed in writing, The Customer shall not seek to engage (directly or indirectly, and in any capacity) any of Blender's Suppliers during the term of the Agreement, and for a period of twelve (12) months after the delivery of the last order is complete.

## 12. LIMITATION OF LIABILITY

- 12.1 Except as expressly provided in the Agreement and to the maximum extent permitted by applicable law, Blender shall not be liable for any damages whatsoever (including, without limitation, damages for lost revenues, loss of business profits, business interruption, loss of business information, or other pecuniary loss, or any direct, indirect, special, incidental, punitive, exemplary or consequential damages of any nature) arising out of or in relation to the supply or non-supply of Parts or the Agreement, even if Blender has been advised of the possibility of such damages.
- 12.2 If Blender is liable for any Losses arising from or in relation to the supply or non-supply of Parts or the Agreement (whether in contract, tort (including negligence), equity, statute or otherwise), its maximum aggregate liability shall be limited to the total price paid for the Parts pursuant to the relevant Production & Supply Estimate.
- 12.3 Blender shall not be liable for any Losses or any defects, failures or inadequacies in the Parts or Services resulting from the Customer's failure to comply with the Agreement.

## 13. INSURANCES

- 13.1 Blender is responsible for holding relevant insurance for the Parts prior to Delivery.
- 13.2 The Customer is responsible for holding relevant insurance for the Parts (following Delivery). Such as, but not limited to; Product Liability and Logistics related insurance.

## 14. NOTICES

- 14.1 Any notice to be served upon a party must be in writing and delivered by hand, prepaid mail, or email to the address notified by the other party for this purpose.
- 14.2 A notice will be deemed to have been received at the time when actually delivered, if delivered by hand, or upon confirmation of successful transmission, if sent by email, or 5 working days after posting, if sent by mail.

## 15. DISPUTE RESOLUTION

15.1 Subject to clause 15.2, neither party may commence court proceedings against the other unless that party has first complied with the following procedure:

- (a) The complainant must provide written notice detailing the nature of the dispute and both parties must make every reasonable effort to resolve the dispute by negotiation.
- (b) On receipt of a dispute notice the parties' authorised representatives shall meet (or otherwise communicate, if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis within five (5) Working Days of the date of the notice.
- (c) If the dispute is not resolved under (b) within five (5) Working Days from the commencement of negotiations under (b), then the dispute shall be escalated to the parties' respective chief executives (or equivalent).
- (d) Where escalation occurs, the parties' chief executive officers (or equivalent) shall meet (or otherwise communicate if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis.
- (e) If the parties remain unable to reach a satisfactory outcome, then the parties may take any further steps as they see fit, provided that neither party shall commence any litigation in relation to an Agreement unless ten (10) Working Days have passed since the parties' respective chief executive officers (or equivalent) have met (or otherwise communicated) and endeavoured to resolve the dispute in good faith and on mutually acceptable terms under (d).

15.2 Nothing in clause 15.1 prevents a party from seeking urgent or injunctive relief from an appropriate Court.

## 16. FORCE MAJEURE

16.1 Neither Blender nor the Customer will be liable for any failure or delay in complying with any of its obligations under the Agreement (excluding any payment obligation) if:

- (a) The failure or delay is caused by a Force Majeure Event; and
- (b) That party uses its best endeavours to:
  - (i) Mitigate the effects of the Force Majeure Event on that party's obligations; and
  - (ii) Perform that party's obligations which are not affected by the Force Majeure Event.

## 17. CUSTOMER TOOLING

17.1 Unless otherwise agreed in writing, all Customer Tooling is owned by you for your exclusive use. All orders for Parts, or any request to access Customer Tooling, must be made through Blender.

17.2 You acknowledge that Customer Tooling is stored by Blender's Suppliers who will maintain it during the normal course of use. However Customer Tooling may need to be repaired from time to time and repair costs may be passed onto you.

17.3 Unless otherwise agreed in writing, Customer Tooling will be stored for up to 2 years without use, upon which Blender may notify you to arrange for the uplift of the Tooling, and you will then have 40 Working Days to arrange for its collection before it is destroyed.

17.4 You acknowledge that the expected life or durability for Customer Tooling (including number of shots for injection moulds) are only estimated values and are not guaranteed or contractually binding.

17.5 If Customer Tooling is transferred for any reason (initiated by you or Blender) to another Converter to manufacture the Parts:

- (a) These Terms and Conditions of Trade shall continue;
- (b) As the owner of the tool, you are responsible for all related transfer expenses and costs incurred (if any) for any relevant tooling rework by or for the new converter.

## 18. TERMINATION OF AGREEMENT

18.1 The Agreement remains in force until cancelled or terminated in accordance with this clause.

18.2 Either party may immediately terminate the Agreement if, and only if:

- (a) The other party defaults in performing its obligations under the Agreement and the default, if capable of being remedied, is not remedied within ten (10) Working Days after receipt or deemed receipt by the defaulting party of a notice specifying the default and requiring remedy; or
- (b) The other party defaults in the performance of its obligations under the Agreement and the default is incapable of being remedied.

18.3 Upon termination of the Agreement, you will be liable to pay Blender for:

- (a) Fees and Expenses (and any other amounts payable under the Agreement) for all Part orders placed or performed prior to termination, and any Fees, Expenses or other amounts payable under the Agreement not previously invoiced and/or paid for; and

(b) Where Blender has terminated the Agreement following any breach by the Customer, any Losses that Blender has incurred as a result of the breach and/or early termination.

following termination, including, without limitation, clauses 4 – 6, 8 – 12, 14, 17 and 20.

20.10 This Agreement may be executed in any number of counterpart copies (including scanned copies exchanged by email).

20.11 Blender is at all times an independent contractor to the Customer. Neither party is an agent, partner or employee of the other.

## **19. ASSIGNMENT**

19.1 Neither party may assign, transfer or novate their rights and obligations in the Agreement to any other party, without prior written consent.

## **20. MISCELLANEOUS PROVISIONS**

20.1 The Agreement is governed by and construed according to the laws of New Zealand and the Customer submits to the exclusive jurisdiction of the Courts of New Zealand.

20.2 If any provision of the Agreement is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of the Agreement will remain in full force and effect.

20.3 Blender is under no obligation to supply a fully costed bill of materials for the Parts or sub assemblies.

20.4 Subject to 11.4, in special circumstances, upon written agreement, Blender may give licence to The Customer to engage directly with a specific Blender Supplier, and may charge a fee to The Customer for this. Both parties acknowledge that agreement and payment in full for the specified supplier will not impede or inhibit any other part of this agreement, or formalise any termination of agreement.

20.5 Subject to 11.4, Blender is obliged to provide contact details for Blender's Suppliers of the relevant Parts to the Customer if Blender ceases trading and is wound up (except for the purposes of a solvent reconstruction of Blender's trading operations and entities).

20.6 The Agreement (comprising these Terms and Conditions and the Production & Supply Estimate) forms the entire agreement between the parties relating to the Parts, and replaces and supersedes any previous proposals, correspondence, understandings or other communications (whether written or oral) in relation to the Parts.

20.7 Blender may outsource part of the work required to supply Parts to the Customer.

20.8 Any failure, delay or omission by a party to enforce or require compliance with any provision of the Agreement will not affect or impair that party's right to enforce or require compliance with the provision or to seek any appropriate remedy in respect of a breach of the provision.

20.9 The covenants, conditions and provisions of the Agreement which are capable of having effect after termination shall remain in full force and effect